

**Remarks**

Claims 1-18, 21-34, and 37-40 are pending in this application. Claims 1-40 stand rejected. Claims 19, 20, 35, and 36 are canceled, and claims 16 and 33 are amended herein.

The following remarks are responsive to the Office action dated December 24, 2008.

**Rejection of Claim 38 under Section 112**

Claim 38 stands rejected under 35 U.S.C. § 112, second paragraph "as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention." The second paragraph of 35 U.S.C. § 112 sets forth two separate requirements: 1) the claims must set forth the subject matter that applicants regard as their invention; and 2) the claims must particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant. See M.P.E.P. § 2171. It has long been recognized that the Office when rejecting a claim based on 35 U.S.C. § 112, second paragraph should specify which of the two requirements is the basis for the rejection. M.P.E.P. § 2171 (citing Ex parte Ionescu, 222 U.S.P.Q. 537, 539 (BPAI 1984)). Nevertheless, the Office in the case at hand has not specified which of the two requirements is the basis for the rejection under 35 U.S.C. § 112, second paragraph. Thus, for the sake of completeness, applicants address both of the requirements set forth in 35 U.S.C. § 112, second paragraph herein.

With respect to the first prong of 35 U.S.C. § 112, second paragraph, absent evidence to the contrary, the invention set forth in the claims is presumed to be that which applicants

regard as their invention. M.P.E.P. § 2172 (citing In re Moore, 169 U.S.P.Q. 236 (CCPA 1971)). In this case, the Office has set forth no evidence whatsoever that supports the position that claim 38 is contrary to what applicants regard as their invention. Accordingly, claim 38 is presumed to claim applicants' invention.

The second prong of 35 U.S.C. § 112, second paragraph requires that the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. M.P.E.P. § 2173.02. The Federal Circuit has held that this standard is met if "those skilled in the art would understand what is claimed when the claim is read in light of the specification." M.P.E.P. § 2173.02 (citing Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 1 U.S.P.Q. 2d 1081, 1088 (Fed. Cir. 1986)).

In this case, the Office has taken the position that the recitation "wherein the surgical procedure, the guideline and the customized item may be selected in any order" (emphasis added) in dependent claim 38 is unclear because independent claim 37 recites "selecting a surgical procedure, guideline or customized item." (emphasis added). Specifically, on page 2 of the Office action, the Office opines that "[c]laim 37, therefore, only requires that one of the listed characteristics be met to meet the limitations of the claim" and that "[i]t is unclear how in claim 38 each of the items are able to be selected in the system."

However, applicants note that claim 37 requires all of the following steps: (1) "selecting a surgical procedure, guideline or customized item;" (2) "selecting another of a surgical procedure, guideline or customized item that was not previously selected;" and (3) "selecting a remaining surgical procedure, guideline or customized item that was not previously selected."

Accordingly, one of ordinary skill in the art, when reading claim 37 as a whole, would understand that, to perform the method of claim 37, a surgical procedure, a guideline and a customized item must all be selected at some point or another. As such, one of ordinary skill in the art, when reading claim 38 in light of claim 37, would readily understand that claim 38 merely recites selecting the surgical procedure, the guideline, and the customized item of claim 37 in any order. Accordingly, it is clear that one skilled in the art would understand the subject matter being claimed in claim 38. Thus, claim 38 is submitted to satisfy all of the requirements of 35 U.S.C. § 112, second paragraph.

#### Response to Rejection of Claims

##### Claim 1

Claim 1 is directed to a method of selecting apparel products for surgical procedures. The method comprises:

- executing program code in a data processing system in order to determine surgical procedures that are associated with a type of apparel;

- selecting one of the surgical procedures; and

- executing program code in the data processing system in order to determine apparel products that are associated with the selected surgical procedure.

Claim 1 is submitted to be unanticipated by and patentable over the references of record, and in particular U.S. Patent No. 5,991,728 (DeBusk), in that whether considered alone or in combination the references fail to disclose or suggest executing program code in a data processing system in order to determine surgical procedures that are associated with a type of apparel.

DeBusk discloses a process for tracking medical supply usage on a procedural level in a clinical setting. The process includes creating a procedural template having a list of supplies to be used during a given medical procedure and creating a recordation form using the procedural template. The recordation form is used during the given medical procedure to record actual supply usage information, and the usage information recorded on the form is used to develop historical resource consumption data. The resource consumption data is subsequently used to predict future supply usage, minimize wasted resources, standardize procedural resource allocation, manage inventory, and improve cost-recovery processes. See column 7, lines 1-37 of DeBusk.

On page 3 of the Office action, the Office has taken the position that DeBusk discloses the method of selecting apparel products for surgical procedures, as recited in Claim 1. Specifically, the Office asserts that the recitation in Claim 1 of "executing program code in a data processing system in order to determine surgical procedures that are associated with a type of apparel" is disclosed in "figures 2, 3, and 5 and column 2 lines 62-67; column 4 lines 45-65" of DeBusk. See page 3 of the Office action. However, Figure 2 of DeBusk merely discloses creating a template of materials to be used in a particular surgical procedure (see, for example, column 9, lines 16-18 of DeBusk); Figure 3 of DeBusk merely discloses developing a procedural pathway describing each phase of the care event in order to facilitate developing the template of materials (see, for example, column 11, lines 4-16); Figure 5 merely discloses listing a tree display of supplies in groups that correspond to given surgical procedures (see, for example, column 14, lines 1-16); column 2, lines 62-67 merely disclose developing a pack of supplies to suit a given surgical procedure; and column 4, lines

45-65 merely disclose modifying the template to suit a specific doctor that is to perform a given surgical procedure.

As such, Debusk does not disclose or suggest determining surgical procedures associated with a type of apparel, as recited in Claim 1. To the contrary, Debusk merely discloses creating a list of supplies associated with a given surgical procedure. Moreover, in the event that the rejection of Claim 1 over Figures 2, 3, and 5 of DeBusk is maintained, applicants respectfully request that the Office provide, in support of its rejection, specific citations (i.e., columns and line numbers) to the particular description of Figures 2, 3, and 5 being relied upon in order to provide applicants with an opportunity to fully and adequately address the Office's assertions.

For the above reasons, claim 1 is submitted to be patentable over Debusk and the other references of record.

Claims 2-5 depend directly from claim 1 and are submitted to be patentable over the references of record for at least the same reasons as claim 1.

#### Claim 6

Claim 6 is directed to a method of selecting apparel products for surgical procedures. The method comprises:

- executing program code in a data processing system in order to determine guidelines that are associated with a type of apparel;

- selecting one of the guidelines; and

- executing program code in the data processing system in order to determine apparel products that are associated with the selected guideline.

Claim 6 is submitted to be unanticipated by and patentable over the references of record, and in particular Medical Supplies & Equipment website (MSEC), in that whether considered

alone or in combination the references fail to disclose or suggest executing program code in a data processing system in order to determine guidelines that are associated with a type of apparel.

MSEC discloses a website featuring a series of web pages for purchasing medical supplies. The website includes a first web page listing links to various different product types for selection by a user; a second web page listing information related to one particular product of the product type selected by the user on page 1; and a third web page listing various particular products of the product type selected by the user on page 1.

On page 4 of the Office action, the Office has taken the position that MSEC discloses the method of selecting apparel products for surgical procedures, as recited in Claim 6. Specifically, the Office asserts that the recitation in Claim 6 of "executing program code in a data processing system in order to determine guidelines that are associated with a type of apparel" is disclosed on page 1 of MSEC by the "Disposable & Patient Gowns" link. However, the Office has not indicated which portions of the link "Disposable & Patient Gowns" are asserted to be the "guidelines" recited in claim 6. Moreover, applicants respectfully submit that page 1 of MSEC does not disclose "guidelines" as recited in claim 6, and applicants respectfully request clarification to that effect in the event that the Office maintains its rejection of claim 6 over MSEC.

For the above reasons, claim 6 is submitted to be patentable over MSEC and the other references of record.

Claims 7-10 depend directly from claim 6 and are submitted to be patentable over the references of record for at least the same reasons as claim 6.

Claim 11

Claim 11 is directed to a method of selecting apparel products for surgical procedures. The method comprises:

executing program code in the data processing system in order to determine customized items that are associated with a type of apparel;

selecting one of the customized items; and

executing program code in the data processing system in order to determine apparel products that are associated with the selected customized item.

Claim 11 is submitted to be unanticipated by and patentable over the references of record, and in particular MSEC, in that whether considered alone or in combination the references fail to disclose or suggest executing program code in the data processing system in order to determine customized items that are associated with a type of apparel.

On page 5 of the Office action, the Office has taken the position that MSEC discloses the method of selecting apparel products for surgical procedures, as recited in Claim 11. Specifically, the Office asserts that the recitation in Claim 11 of "executing program code in the data processing system in order to determine customized items that are associated with a type of apparel" is disclosed on "pages 1-3" of MSEC. See page 5 of the Office action. However, as stated above, page 1 of MSEC merely discloses a list of product types in the form of links to be selected by a user; page 2 merely discloses additional information about a particular product of the product type selected by the user on page 1; and page 3 merely discloses a list of particular products of the product type selected by the user on page 1.

Moreover, the Office has not indicated which portions of "pages 1-3" are asserted to be the "customized items" recited in

claim 11. Applicants respectfully submit that pages 1-3 of MSEC do not disclose "customized items" as recited in claim 11, and applicants respectfully request clarification to that effect in the event that the Office maintains its rejection of claim 11 over MSEC. Specifically, in the event that the rejection of Claim 11 over MSEC is maintained, applicants respectfully request that the Office provides, in support of its rejection, specific citations and detailed explanation as to the specific portions of MSEC in order to provide applicants with an opportunity to fully and adequately address the Office's assertions.

For the above reasons, claim 11 is submitted to be patentable over MSEC and the other references of record.

Claims 12-15 depend directly from claim 11 and are submitted to be patentable over the references of record for at least the same reasons as claim 11.

#### Claim 16

Amended claim 16 is directed to a method of selecting apparel products for surgical procedures. The method comprises:  
entering a surgical procedure into a data processing system;

executing program code in the data processing system in order to determine apparel products that are associated with the surgical procedure;

displaying the apparel products to a user; and

executing program code in the data processing system in order to filter the displayed apparel products according to at least one of a guideline and a customized item associated with the displayed apparel products.

Amended claim 16 is submitted to be non-obvious in view of and patentable over the references of record, and in particular

DeBusk in combination with MSEC, for at least the same reasons set forth above with respect to claims 6 and 11. That is, whether considered alone or in combination, DeBusk and MSEC fail to show or suggest executing program code in the data processing system in order to filter the displayed apparel products according to at least one of a guideline and a customized item associated with the displayed apparel products.

For the above reasons, amended claim 16 is submitted to be patentable over DeBusk in view of MSEC and the other references of record.

Claims 17 and 18 depend directly from claim 16 and are submitted to be patentable over the references of record for at least the same reasons as claim 16.

#### Claim 21

Claim 21 is directed to a data processing system comprising:

a computer readable storage medium; and  
program code stored on the computer readable storage medium, wherein executing the program code includes determining surgical procedures that are associated with a type of apparel entered by a user, accepting one of the surgical procedures as selected by the user, and determining apparel products that are associated with the selected surgical procedure.

Claim 21 is submitted to be non-obvious in view of and patentable over the references of record, and in particular DeBusk in combination with Danneels et al., for at least the same reasons set forth above with respect to claim 1. That is, DeBusk fails to disclose or suggest determining surgical procedures that are associated with a type of apparel entered by a user, and Danneels et al. also fails to disclose or suggest such a feature, given that Danneels et al. merely discloses

linking a supplier's website with a reseller's website to facilitate e-commerce. See, for example, column 2, lines 59-63 of Danneels et al.

For the above reasons, claim 21 is submitted to be patentable over DeBusk in view of Danneels et al. and the other references of record.

Claims 22-24 depend directly from claim 21 and are submitted to be patentable over the references of record for at least the same reasons as claim 21.

#### Claim 25

Claim 25 is directed to a data processing system comprising:

a computer readable storage medium; and  
program code stored on the computer readable storage medium, wherein executing the program code includes determining guidelines that are associated with a type of apparel entered by a user, accepting one of the guidelines as selected by the user, and determining apparel products that are associated with the selected guideline.

Claim 25 is submitted to be non-obvious in view of and patentable over the references of record, and in particular MSEC in combination with Danneels et al., for at least the same reasons set forth above with respect to claim 6. That is, MSEC fails to disclose or suggest determining guidelines that are associated with a type of apparel entered by a user, and Danneels et al. also fails to disclose or suggest such a feature, given that Danneels et al. merely discloses linking a supplier's website with a reseller's website to facilitate e-commerce. See, for example, column 2, lines 59-63 of Danneels et al.

For the above reasons, claim 25 is submitted to be patentable over MSEC in view of Danneels et al. and the other references of record.

Claims 26-28 depend directly from claim 25 and are submitted to be patentable over the references of record for at least the same reasons as claim 25.

#### Claim 29

Claim 29 is directed to a data processing system comprising:

a computer readable storage medium; and  
program code stored on the computer readable storage medium, wherein executing the program code includes determining customized items that are associated with a type of apparel entered by a user, accepting one of the customized items as selected by the user, and determining apparel products that are associated with the selected customized item.

Claim 29 is submitted to be non-obvious in view of and patentable over the references of record, and in particular MSEC in combination with Danneels et al., for at least the same reasons set forth above with respect to claim 11. That is, MSEC fails to show or suggest determining customized items that are associated with a type of apparel entered by a user, and Danneels et al. also fails to disclose or suggest such a feature, given that Danneels et al. merely discloses linking a supplier's website with a reseller's website to facilitate e-commerce. See, for example, column 2, lines 59-63 of Danneels et al.

For the above reasons, claim 29 is submitted to be patentable over MSEC in view of Danneels et al. and the other references of record.

Claims 30-32 depend directly from claim 29 and are submitted to be patentable over the references of record for at least the same reasons as claim 29.

Claim 33

Amended claim 33 is directed to a data processing system comprising:

a computer readable storage medium; and  
program code stored on the computer readable storage medium, wherein executing the program code includes accepting a surgical procedure entered by a user, determining types of apparel that are associated with the surgical procedure entered by the user, accepting one type of apparel as selected by the user,—determining apparel products that are associated with the selected type of apparel, accepting at least one of a guideline and a customized item associated with the apparel products, and determining at least one of the apparel products that is associated with the at least one of a guideline and a customized item.

Amended claim 33 is submitted to be non-obvious in view of and patentable over the references of record, and in particular DeBusk in combination with MSEC and Danneels et al., for at least the same reasons set forth above with respect to claim 1. That is, DeBusk fails to show or suggest determining surgical procedures that are associated with a type of apparel entered by the user, and MSEC and Danneels et al. also fail to suggest such a feature.

For the above reasons, claim 33 is submitted to be patentable over DeBusk, MSEC, and Danneels et al.

Claim 34 depends directly from claim 33 and is submitted to be patentable over the references of record for at least the same reasons as claim 33.

Claim 37

Claim 37 is directed to a method of selecting apparel products for surgical procedures. The method comprises:

executing program code in a data processing system in order to determine types of surgical procedures, guidelines and customized items that are associated with a type of apparel;

selecting a surgical procedure, guideline or customized item;

executing program code in the data processing system in order to determine apparel products that are associated with the selected surgical procedure, guideline or customized item;

selecting another of a surgical procedure, guideline or customized item that was not previously selected;

executing program code in the data processing system in order to determine apparel products that are associated with the selected another surgical procedure, guideline or customized item that was not previously selected;

selecting a remaining surgical procedure, guideline or customized item that was not previously selected; and

executing program code in the data processing system in order to determine apparel products that are associated with the selected remaining surgical procedure, guideline or customized item.

Claim 37 is submitted to be non-obvious in view of and patentable over the references of record, and in particular DeBusk in combination with MSEC, for at least the same reasons set forth above with respect to claim 1. That is, DeBusk fails to show or suggest determining surgical procedures that are associated with a type of apparel entered by the user, and MSEC also fails to suggest such a feature.

For the above reasons, claim 37 is submitted to be patentable over DeBusk, MSEC, and the other references of record.

Claim 38 depends directly from claim 37 and is submitted to be patentable over the references of record for at least the same reasons as claim 37.

#### Claim 39

Claim 39 is directed to a data processing system comprising:

a computer readable storage medium; and  
program code stored on the computer readable storage medium, wherein executing the program code includes accepting a type of apparel entered by a user, determining surgical procedures, guidelines and customized items that are associated with the type of apparel entered by the user, selecting one of the surgical procedures, guidelines or customized items, and determining apparel products that are associated with the selected surgical procedure, guideline or customized item, selecting another of the surgical procedures, guidelines or customized items that was not previously selected, and determining apparel products that are associated with the selected another surgical procedure, guideline or customized item, selecting a remaining one of the surgical procedures, guidelines or customized items that was not previously selected, and determining apparel products that are associated with the selected remaining surgical procedure, guideline or customized item.

Claim 39 is submitted to be non-obvious in view of and patentable over the references of record, and in particular DeBusk in combination with MSEC and Danneels et al., for at least the same reasons set forth above with respect to claim 1.

That is, DeBusk fails to show or suggest determining surgical procedures that are associated with a type of apparel entered by the user, and MSEC and Danneels et al. also fail to suggest such a feature.

For the above reasons, claim 39 is submitted to be patentable over DeBusk, MSEC, and Danneels et al.

Claim 40 depends directly from claim 39 and is submitted to be patentable over the references of record for at least the same reasons as claim 39.

### **Conclusion**

In view of the foregoing, favorable consideration and allowance of claims 1-18, 21-34, and 37-40 is respectfully requested.

Appellants do not believe that any fee is due. However, the Commissioner is hereby authorized to charge any deficiency or overpayment of any fees to Deposit Account No. 12-384.

Respectfully submitted,

/Richard L. Bridge/

Richard L. Bridge, Reg. No. 40,529  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, 26th Floor  
St. Louis, Missouri 63102  
(314) 621-5070

RLB/SBG/mar  
Via EFS